

## Senate Bill No. 2025

### CHAPTER 1048

An act to amend Sections 19231, 19240, and 19702 of, and to add Section 19632 to, the Government Code, relating to state civil service.

[Approved by Governor September 30, 2000. Filed  
with Secretary of State September 30, 2000.]

#### LEGISLATIVE COUNSEL'S DIGEST

SB 2025, Burton. State civil service: persons with disabilities: administrative proceedings.

(1) The State Civil Service Act prohibits discrimination against a person because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. Under the California Fair Employment and Housing Act, it is an unlawful employment practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the state, to engage in specified discriminatory employment practices, including hiring, promotion, and termination on the same bases as the State Civil Service Act, but the California Fair Employment and Housing Act also includes sexual orientation as one of the bases. The State Civil Service Act also establishes state policies and prescribes requirements for employing individuals with a disability in state service.

This bill would apply the definitions contained in the California Fair Employment and Housing Act pertaining to unlawful practices to the State Civil Service Act.

(2) Under the State Civil Service Act, the State Personnel Board is responsible for the Limited Examination and Appointment Program, which is an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in state service.

This bill would apply the definition of "disability" in the California Fair Employment and Housing Act to the Limited Examination and Appointment Program. This bill would specify that this definition of "disability" is superseded by the definition of that term in the federal Americans with Disabilities Act of 1990 if broader civil rights protection would thereby be produced for persons with mental or physical disabilities.

(3) Existing law authorizes a court to inquire into the validity of any final administrative order or decision made as the result of a proceeding in which a hearing is required to be given and other requirements are to be met.

This bill would, in any proceeding brought pursuant to the above described provisions for the purpose of inquiring into the validity of any final administrative order or decision by the State Personnel Board, require an award of costs or attorney's fees to the petitioner to be borne by the real party in interest and not the State Personnel Board, unless there is no real party in interest.

*The people of the State of California do enact as follows:*

SECTION 1. Section 19231 of the Government Code is amended to read:

19231. (a) For the purposes of this article, the definitions in Section 12926, as that section presently reads or as it subsequently may be amended, apply.

SEC. 2. Section 19240 of the Government Code is amended to read:

19240. (a) The State Personnel Board shall be responsible for the Limited Examination and Appointment Program. This program shall provide an alternative to the traditional civil service examination and appointment process to facilitate the hiring of persons with disabilities in the state civil service where accommodation can be provided and where prohibitive physical requirements are not mandated by the board.

(b) "Disability" for the purposes of this article has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) Notwithstanding subdivision (b), if the definition of "disability" used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental or physical disability, as defined in subdivision (b), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definition in subdivision (b). The definition of "disability" contained in subdivision (b) shall not be deemed to refer to or include conditions excluded from the federal definition of "disability" pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

SEC. 3. Section 19632 is added to the Government Code, to read:

19632. In any proceeding brought pursuant to Section 1094.5 of the Code of Civil Procedure for the purpose of inquiring into the validity of any final administrative order or decision by the board, an award of costs or attorney's fees or both to the petitioner shall be borne by the real party in interest and shall not be assessed against the board, unless there is no real party in interest. This section may not be construed to authorize an award of attorney's fees.

SEC. 4. Section 19702 of the Government Code is amended to read:



19702. (a) A person shall not be discriminated against under this part because of sex, race, religious creed, color, national origin, ancestry, marital status, physical disability, or mental disability. A person shall not be retaliated against because he or she has opposed any practice made an unlawful employment practice, or made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. For purposes of this article, “discrimination” includes harassment. This subdivision is declaratory of existing law.

(b) As used in this section, the term “physical disability” has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(c) As used in this section, the term “mental disability” has the definition set forth in Section 12926, as that section presently reads or as it subsequently may be amended.

(d) Notwithstanding subdivisions (b) and (c), if the definition of disability used in the federal Americans with Disabilities Act of 1990 (Public Law 101-336) would result in broader protection of the civil rights of individuals with a mental disability or physical disability, as defined in subdivision (b) or (c), then that broader protection shall be deemed incorporated by reference into, and shall prevail over conflicting provisions of, the definitions in subdivisions (b) and (c). The definitions of subdivisions (b) and (c) shall not be deemed to refer to or include conditions excluded from the federal definition of “disability” pursuant to Section 511 of the federal Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12211).

(e) If the board finds that a person has engaged in discrimination under this part, and it appears that this practice consisted of acts described in Section 243.4, 261, 262, 286, 288, 288a, or 289 of the Penal Code, the board, with the consent of the complainant, shall provide the local district attorney’s office with a copy of its decision and order.

(f) (1) If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to, hiring, reinstatement, or upgrading of employees, with or without backpay, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(2) Notwithstanding paragraph (1), this paragraph shall apply to state employees in State Bargaining Unit 6 or 8. If the board finds that discrimination has occurred in violation of this part, the board shall issue and cause to be served on the appointing authority an order requiring the appointing authority to cause the discrimination to cease and desist and to take any action, including, but not limited to,

hiring, reinstatement, or upgrading of employees, with or without backpay, adding additional seniority, and compensatory damages, which, in the judgment of the board, will effectuate the purposes of this part. Consistent with this authority, the board may establish rules governing the award of compensatory damages. The order shall include a requirement of reporting the manner of compliance.

(g) Any person claiming discrimination within the state civil service may submit a complaint that shall be in writing and set forth the particulars of the alleged discrimination, the name of the appointing authority, the persons alleged to have committed the unlawful discrimination, and any other information that may be required by the board. The complaint shall be filed with the appointing authority or, in accordance with board rules, with the board itself.

(h) (1) Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in adverse actions or rejections on probation shall be filed in accordance with Sections 19175 and 19575.

(2) Notwithstanding paragraph (1), this paragraph shall apply only to state employees in State Bargaining Unit 8. Complaints shall be filed within one year of the alleged unlawful discrimination or the refusal to act in accordance with this section, except that this period may be extended for not to exceed 90 days following the expiration of that year, if a person allegedly aggrieved by unlawful discrimination first obtained knowledge of the facts of the alleged unlawful discrimination after the expiration of one year from the date of its occurrence. Complaints of discrimination in disciplinary actions defined in Section 19576.5 shall be filed in accordance with that section. Complaints of discrimination in all other disciplinary actions shall be filed in accordance with Section 19575. Complaints of discrimination in rejections on probation shall be filed in accordance with Section 19175.3.

(i) (1) When an employee of the appointing authority refuses, or threatens to refuse, to cooperate in the investigation of a complaint of discrimination, the appointing authority may seek assistance from the board. The board may provide for direct investigation or hearing of the complaint, the use of subpoenas, or any other action which will effect the purposes of this section.

(2) This subdivision shall not apply to complaints of discrimination filed in accordance with Section 19576.2.

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